

DIVISION I

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
ROBERT J. GLADWIN, Judge

CACR06-177

OCTOBER 25, 2006

MIGUEL PINEDA

APPELLANT

APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[NO. CR 2004-54-B]

HON. MICHAEL MEDLOCK,  
JUDGE

V.

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Miguel Pineda was found guilty in the Crawford County Circuit Court on August 2, 2005, of possession of cocaine with intent to deliver and possession of drug paraphernalia. Appellant's sole point on appeal is that the trial court erred in denying his motion to suppress, wherein he claims the search of his vehicle was illegal. We affirm because appellant lacks standing to challenge the search.

On January 26, 2004, appellant was spotted driving a vehicle over the fog line while heading east on Interstate 40. Officer Jason Parrish, a Crawford County Sheriff's Deputy, stopped the vehicle around 3:00 a.m. Officer Parrish spoke with appellant and obtained appellant's license, insurance and registration from him. Appellant answered "yes" when the officer asked if he was tired. Most other questions directed to appellant were answered by appellant's sister, Mable Pineda, who had been asleep in the vehicle when the stop occurred.

Ms. Pineda explained that she and appellant were siblings driving their mother's car to Georgia from California.

Officer Parrish discovered the car was registered to a male. While Officer Parrish was having a warrant check run on both appellant's and Ms. Pineda's driver's licenses, Corporal Bowman of the Van Buren Police Department pulled alongside Officer Parrish's vehicle and pointed to a leak coming from the rear of the stopped vehicle. Officer Parrish investigated the leak and discovered it was gasoline coming from the gas tank of the vehicle. The leak was described as "pretty heavy," and a large pool of gasoline had accumulated over the span of about five minutes. When Officer Parrish looked under the vehicle to inspect the leak, he noticed the bolts holding the gas tank to the vehicle were worn. The officer issued a warning ticket for driving past the fog line and returned appellant's paperwork. At that time, he informed appellant and Ms. Pineda of the gas leak. Ms. Pineda asked if there was a place to have the leak fixed, and the officer responded that there was not because of the early hour. She told him that they would have it checked "down the road."

Officer Parrish testified that he observed the reactions of both appellant and Ms. Pineda to the news of the gas leak. He described their demeanor as nervous, yet unconcerned about the leak. In the vehicle were fast food wrappers, a baby's bag with a full bottle, and a gas can. He testified that he considered the items in the vehicle, appellant's and Ms. Pineda's demeanor, the fact that neither appellant nor his sister were registered owners of the vehicle, and the gas leak, when he asked permission to search the vehicle. Ms. Pineda

consented to the search. Appellant testified at trial that his sister told him what the officer asked, and he also consented.

Corporal Bowman ran his canine around the vehicle to search for drugs. The dog alerted near the gas tank. Based on the gas leak and the worn bolts, Corporal Bowman used a scope to see inside the gas tank. He discovered cellophane packages floating there. At that point, both the driver and passenger were arrested, and the vehicle was towed and inspected. The gas tank was removed and the officers found a trap door cut into the rear of the tank, which had caused the leak. Inside the tank were ten bundles wrapped in cellophane. Those bundles were cut open and field tested positive for cocaine. On February 3, 2004, appellant was charged with possession of cocaine with intent to deliver and possession of drug paraphernalia. The trial court denied appellant's motion to suppress at the suppression hearing and again when the motion was renewed at trial.

On appeal, appellant claims that the detention after the legitimate purpose of the traffic stop was a violation of the Fourth Amendment and Ark. R. Crim. P. 3.1 in the absence of consent and any reasonable suspicion of criminal activity. However, because appellant has failed to show that he had an expectation of privacy in the vehicle, we do not reach the issue of the legality of the search.

This court has examined the issue of standing in *Ramage v. State*, 61 Ark. App. 174, 966 S.W.2d 267 (1998), wherein we said that Fourth Amendment rights against unreasonable searches and seizures are personal in nature. Thus, a defendant must have standing before he can challenge a search on Fourth Amendment grounds. *Ramage, supra*. The pertinent

inquiry regarding standing to challenge a search is whether the defendant manifested a subjective expectation of privacy in the area searched and whether society is prepared to recognize that expectation as reasonable. *Id.* It is well settled that the defendant, as the proponent of a motion to suppress, bears the burden of establishing that his Fourth Amendment rights have been violated. *Id.* A person's Fourth Amendment rights are not violated by the introduction of damaging evidence secured by the search of a third person's premises or property. *Id.* A defendant has no standing to question the search of a vehicle unless he can show that he owns the vehicle or that he gained possession of it from the owner or someone else who had authority to grant possession. *Id.* One is not entitled to automatic standing simply because he is present in the area or on the premises searched or because an element of the offense with which he is charged is possession of the thing discovered in the search. *Id.* This court will not reach the constitutionality of a search where the defendant has failed to show that he had a reasonable expectation of privacy in the object of the search. *Id.*

Appellant failed to present proof that he had a legitimate expectation of privacy in the vehicle. His sister's statement to the police officer that their mother owned the vehicle was negated by the registration, which reflected that the owner was male. Appellant did not testify at the suppression hearing, and at trial, appellant claimed that his sister's boyfriend bought the car and had asked her to drive it back to Georgia. Therefore, we do not reach the merits of his argument on appeal because appellant failed to prove the proprietary or possessory interest necessary to establish standing.

Affirmed.

ROBBINS and BAKER, JJ., agree.